IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7466 OF 2004

Mr.Blaise Bamatto. Petitioner

Vs.

Mr.Valmini M.Hublee. Respondent

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Shri Blaise Bamatto, the Petitioner in person.

Shri Y.S.Bhate for the respondent.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 11th OCTOBER, 2004.

P.C.

1. Heard the petitioner in person and the learned advocate for the respondent.

2. The petitioner has also submitted written arguments. The same are taken on record.

3. The petitioner challenges the order dated 25th November, 2003 passed by the appellate bench of the Small Causes Court, Mumbai, dismissing the appeal filed by the petitioner against the order passed by the learned Judge of the Small Causes Court allowing

the application of the respondent for setting aside the ex parte decree, which was passed against him.

4. Bare perusal of the impugned order discloses that the appeal has been dismissed as the order passed in exercise of the powers under Order IX Rule 13 of the Code of Civil Procedure, 1908 setting aside the ex parte decree is not appealable under Order 43 of the Code of Civil Procedure. Once it is clear that any order passed by the trial Court in exercise of the powers under Order IX Rule 13 of the Code of Civil Procedure setting aside the ex parte decree is not appealable under Order 43 thereof, and in accordance with the provisions of law the appellate bench of the Small Causes Court was justified in dismissing the appeal, and therefore, no fault can be found with the impugned order.

5. It is not necessary to go into the merits of the case sought to be pleaded by the petitioner, as the same were not dealt with in the impugned order, and rightly so, as the appellate bench has not entertained the appeal itself. Being so, there is no case for interference in the impugned order. The petition is therefore rejected with no order as to costs.